

SB1215



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1215

Introduced 2/9/2007, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111

Amends the Public Utilities Act. Makes a technical change in a Section concerning rates and restructuring transactions during the mandatory transition period.

LRB095 10712 MJR 30947 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-111 as follows:

6 (220 ILCS 5/16-111)

7 Sec. 16-111. Rates and ~~and~~ restructuring transactions
8 during mandatory transition period.

9 (a) During the mandatory transition period,
10 notwithstanding any provision of Article IX of this Act, and
11 except as provided in subsections (b), (d), (e), and (f) of
12 this Section, the Commission shall not (i) initiate, authorize
13 or order any change by way of increase (other than in
14 connection with a request for rate increase which was filed
15 after September 1, 1997 but prior to October 15, 1997, by an
16 electric utility serving less than 12,500 customers in this
17 State), (ii) initiate or, unless requested by the electric
18 utility, authorize or order any change by way of decrease,
19 restructuring or unbundling (except as provided in Section
20 16-109A), in the rates of any electric utility that were in
21 effect on October 1, 1996, or (iii) in any order approving any
22 application for a merger pursuant to Section 7-204 that was
23 pending as of May 16, 1997, impose any condition requiring any

1 filing for an increase, decrease, or change in, or other review
2 of, an electric utility's rates or enforce any such condition
3 of any such order; provided, however, that this subsection
4 shall not prohibit the Commission from:

5 (1) approving the application of an electric utility to
6 implement an alternative to rate of return regulation or a
7 regulatory mechanism that rewards or penalizes the
8 electric utility through adjustment of rates based on
9 utility performance, pursuant to Section 9-244;

10 (2) authorizing an electric utility to eliminate its
11 fuel adjustment clause and adjust its base rate tariffs in
12 accordance with subsection (b), (d), or (f) of Section
13 9-220 of this Act, to fix its fuel adjustment factor in
14 accordance with subsection (c) of Section 9-220 of this
15 Act, or to eliminate its fuel adjustment clause in
16 accordance with subsection (e) of Section 9-220 of this
17 Act;

18 (3) ordering into effect tariffs for delivery services
19 and transition charges in accordance with Sections 16-104
20 and 16-108, for real-time pricing in accordance with
21 Section 16-107, or the options required by Section 16-110
22 and subsection (n) of 16-112, allowing a billing experiment
23 in accordance with Section 16-106, or modifying delivery
24 services tariffs in accordance with Section 16-109; or

25 (4) ordering or allowing into effect any tariff to
26 recover charges pursuant to Sections 9-201.5, 9-220.1,

1 9-221, 9-222 (except as provided in Section 9-222.1),
2 16-108, and 16-114 of this Act, Section 5-5 of the
3 Electricity Infrastructure Maintenance Fee Law, Section
4 6-5 of the Renewable Energy, Energy Efficiency, and Coal
5 Resources Development Law of 1997, and Section 13 of the
6 Energy Assistance Act.

7 After December 31, 2004, the provisions of this subsection
8 (a) shall not apply to an electric utility whose average
9 residential retail rate was less than or equal to 90% of the
10 average residential retail rate for the "Midwest Utilities", as
11 that term is defined in subsection (b) of this Section, based
12 on data reported on Form 1 to the Federal Energy Regulatory
13 Commission for calendar year 1995, and which served between
14 150,000 and 250,000 retail customers in this State on January
15 1, 1995 unless the electric utility or its holding company has
16 been acquired by or merged with an affiliate of another
17 electric utility subsequent to January 1, 2002. This exemption
18 shall be limited to this subsection (a) and shall not extend to
19 any other provisions of this Act.

20 (b) Notwithstanding the provisions of subsection (a), each
21 Illinois electric utility serving more than 12,500 customers in
22 Illinois shall file tariffs (i) reducing, effective August 1,
23 1998, each component of its base rates to residential retail
24 customers by 15% from the base rates in effect immediately
25 prior to January 1, 1998 and (ii) if the public utility
26 provides electric service to (A) more than 500,000 customers

1 but less than 1,000,000 customers in this State on January 1,
2 1999, reducing, effective May 1, 2002, each component of its
3 base rates to residential retail customers by an additional 5%
4 from the base rates in effect immediately prior to January 1,
5 1998, or (B) at least 1,000,000 customers in this State on
6 January 1, 1999, reducing, effective October 1, 2001, each
7 component of its base rates to residential retail customers by
8 an additional 5% from the base rates in effect immediately
9 prior to January 1, 1998. Provided, however, that (A) if an
10 electric utility's average residential retail rate is less than
11 or equal to the average residential retail rate for a group of
12 Midwest Utilities (consisting of all investor-owned electric
13 utilities with annual system peaks in excess of 1000 megawatts
14 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
15 Missouri, Ohio, and Wisconsin), based on data reported on Form
16 1 to the Federal Energy Regulatory Commission for calendar year
17 1995, then it shall only be required to file tariffs (i)
18 reducing, effective August 1, 1998, each component of its base
19 rates to residential retail customers by 5% from the base rates
20 in effect immediately prior to January 1, 1998, (ii) reducing,
21 effective October 1, 2000, each component of its base rates to
22 residential retail customers by the lesser of 5% of the base
23 rates in effect immediately prior to January 1, 1998 or the
24 percentage by which the electric utility's average residential
25 retail rate exceeds the average residential retail rate of the
26 Midwest Utilities, based on data reported on Form 1 to the

1 Federal Energy Regulatory Commission for calendar year 1999,
2 and (iii) reducing, effective October 1, 2002, each component
3 of its base rates to residential retail customers by an
4 additional amount equal to the lesser of 5% of the base rates
5 in effect immediately prior to January 1, 1998 or the
6 percentage by which the electric utility's average residential
7 retail rate exceeds the average residential retail rate of the
8 Midwest Utilities, based on data reported on Form 1 to the
9 Federal Energy Regulatory Commission for calendar year 2001;
10 and (B) if the average residential retail rate of an electric
11 utility serving between 150,000 and 250,000 retail customers in
12 this State on January 1, 1995 is less than or equal to 90% of
13 the average residential retail rate for the Midwest Utilities,
14 based on data reported on Form 1 to the Federal Energy
15 Regulatory Commission for calendar year 1995, then it shall
16 only be required to file tariffs (i) reducing, effective August
17 1, 1998, each component of its base rates to residential retail
18 customers by 2% from the base rates in effect immediately prior
19 to January 1, 1998; (ii) reducing, effective October 1, 2000,
20 each component of its base rates to residential retail
21 customers by 2% from the base rate in effect immediately prior
22 to January 1, 1998; and (iii) reducing, effective October 1,
23 2002, each component of its base rates to residential retail
24 customers by 1% from the base rates in effect immediately prior
25 to January 1, 1998. Provided, further, that any electric
26 utility for which a decrease in base rates has been or is

1 placed into effect between October 1, 1996 and the dates
2 specified in the preceding sentences of this subsection, other
3 than pursuant to the requirements of this subsection, shall be
4 entitled to reduce the amount of any reduction or reductions in
5 its base rates required by this subsection by the amount of
6 such other decrease. The tariffs required under this subsection
7 shall be filed 45 days in advance of the effective date.
8 Notwithstanding anything to the contrary in Section 9-220 of
9 this Act, no restatement of base rates in conjunction with the
10 elimination of a fuel adjustment clause under that Section
11 shall result in a lesser decrease in base rates than customers
12 would otherwise receive under this subsection had the electric
13 utility's fuel adjustment clause not been eliminated.

14 (c) Any utility reducing its base rates by 15% on August 1,
15 1998 pursuant to subsection (b) shall include the following
16 statement on its bills for residential customers from August 1
17 through December 31, 1998: "Effective August 1, 1998, your
18 rates have been reduced by 15% by the Electric Service Customer
19 Choice and Rate Relief Law of 1997 passed by the Illinois
20 General Assembly.". Any utility reducing its base rates by 5%
21 on August 1, 1998, pursuant to subsection (b) shall include the
22 following statement on its bills for residential customers from
23 August 1 through December 31, 1998: "Effective August 1, 1998,
24 your rates have been reduced by 5% by the Electric Service
25 Customer Choice and Rate Relief Law of 1997 passed by the
26 Illinois General Assembly.".

1 Any utility reducing its base rates by 2% on August 1, 1998
2 pursuant to subsection (b) shall include the following
3 statement on its bills for residential customers from August 1
4 through December 31, 1998: "Effective August 1, 1998, your
5 rates have been reduced by 2% by the Electric Service Customer
6 Choice and Rate Relief Law of 1997 passed by the Illinois
7 General Assembly."

8 (d) During the mandatory transition period, but not before
9 January 1, 2000, and notwithstanding the provisions of
10 subsection (a), an electric utility may request an increase in
11 its base rates if the electric utility demonstrates that the
12 2-year average of its earned rate of return on common equity,
13 calculated as its net income applicable to common stock divided
14 by the average of its beginning and ending balances of common
15 equity using data reported in the electric utility's Form 1
16 report to the Federal Energy Regulatory Commission but adjusted
17 to remove the effects of accelerated depreciation or
18 amortization or other transition or mitigation measures
19 implemented by the electric utility pursuant to subsection (g)
20 of this Section and the effect of any refund paid pursuant to
21 subsection (e) of this Section, is below the 2-year average for
22 the same 2 years of the monthly average yields of 30-year U.S.
23 Treasury bonds published by the Board of Governors of the
24 Federal Reserve System in its weekly H.15 Statistical Release
25 or successor publication. The Commission shall review the
26 electric utility's request, and may review the justness and

1 reasonableness of all rates for tariffed services, in
2 accordance with the provisions of Article IX of this Act,
3 provided that the Commission shall consider any special or
4 negotiated adjustments to the revenue requirement agreed to
5 between the electric utility and the other parties to the
6 proceeding. In setting rates under this Section, the Commission
7 shall exclude the costs and revenues that are associated with
8 competitive services and any billing or pricing experiments
9 conducted under Section 16-106.

10 (e) For the purposes of this subsection (e) all
11 calculations and comparisons shall be performed for the
12 Illinois operations of multijurisdictional utilities. During
13 the mandatory transition period, notwithstanding the
14 provisions of subsection (a), if the 2-year average of an
15 electric utility's earned rate of return on common equity,
16 calculated as its net income applicable to common stock divided
17 by the average of its beginning and ending balances of common
18 equity using data reported in the electric utility's Form 1
19 report to the Federal Energy Regulatory Commission but adjusted
20 to remove the effect of any refund paid under this subsection
21 (e), and further adjusted to include the annual amortization of
22 any difference between the consideration received by an
23 affiliated interest of the electric utility in the sale of an
24 asset which had been sold or transferred by the electric
25 utility to the affiliated interest subsequent to the effective
26 date of this amendatory Act of 1997 and the consideration for

1 which such asset had been sold or transferred to the affiliated
2 interest, with such difference to be amortized ratably from the
3 date of the sale by the affiliated interest to December 31,
4 2006, exceeds the 2-year average of the Index for the same 2
5 years by 1.5 or more percentage points, the electric utility
6 shall make refunds to customers beginning the first billing day
7 of April in the following year in the manner described in
8 paragraph (3) of this subsection. For purposes of this
9 subsection (e), the "Index" shall be the sum of (A) the average
10 for the 12 months ended September 30 of the monthly average
11 yields of 30-year U.S. Treasury bonds published by the Board of
12 Governors of the Federal Reserve System in its weekly H.15
13 Statistical Release or successor publication for each year 1998
14 through 2006, and (B) (i) 4.00 percentage points for each of
15 the 12-month periods ending September 30, 1998 through
16 September 30, 1999 or 8.00 percentage points if the electric
17 utility's average residential retail rate is less than or equal
18 to 90% of the average residential retail rate for the "Midwest
19 Utilities", as that term is defined in subsection (b) of this
20 Section, based on data reported on Form 1 to the Federal Energy
21 Regulatory Commission for calendar year 1995, and the electric
22 utility served between 150,000 and 250,000 retail customers on
23 January 1, 1995, (ii) 7.00 percentage points for each of the
24 12-month periods ending September 30, 2000 through September
25 30, 2006 if the electric utility was providing service to at
26 least 1,000,000 customers in this State on January 1, 1999, or

1 9.00 percentage points if the electric utility's average
2 residential retail rate is less than or equal to 90% of the
3 average residential retail rate for the "Midwest Utilities", as
4 that term is defined in subsection (b) of this Section, based
5 on data reported on Form 1 to the Federal Energy Regulatory
6 Commission for calendar year 1995 and the electric utility
7 served between 150,000 and 250,000 retail customers in this
8 State on January 1, 1995, (iii) 11.00 percentage points for
9 each of the 12-month periods ending September 30, 2000 through
10 September 30, 2006, but only if the electric utility's average
11 residential retail rate is less than or equal to 90% of the
12 average residential retail rate for the "Midwest Utilities", as
13 that term is defined in subsection (b) of this Section, based
14 on data reported on Form 1 to the Federal Energy Regulatory
15 Commission for calendar year 1995, the electric utility served
16 between 150,000 and 250,000 retail customers in this State on
17 January 1, 1995, and the electric utility offers delivery
18 services on or before June 1, 2000 to retail customers whose
19 annual electric energy use comprises 33% of the kilowatt hour
20 sales to that group of retail customers that are classified
21 under Division D, Groups 20 through 39 of the Standard
22 Industrial Classifications set forth in the Standard
23 Industrial Classification Manual published by the United
24 States Office of Management and Budget, excluding the kilowatt
25 hour sales to those customers that are eligible for delivery
26 services pursuant to Section 16-104(a)(1)(i), and offers

1 delivery services to its remaining retail customers classified
2 under Division D, Groups 20 through 39 on or before October 1,
3 2000, and, provided further, that the electric utility commits
4 not to petition pursuant to Section 16-108(f) for entry of an
5 order by the Commission authorizing the electric utility to
6 implement transition charges for an additional period after
7 December 31, 2006, or (iv) 5.00 percentage points for each of
8 the 12-month periods ending September 30, 2000 through
9 September 30, 2006 for all other electric utilities or 7.00
10 percentage points for such utilities for each of the 12-month
11 periods ending September 30, 2000 through September 30, 2006
12 for any such utility that commits not to petition pursuant to
13 Section 16-108(f) for entry of an order by the Commission
14 authorizing the electric utility to implement transition
15 charges for an additional period after December 31, 2006 or
16 11.00 percentage points for each of the 12-month periods ending
17 September 30, 2005 and September 30, 2006 for each electric
18 utility providing service to fewer than 6,500, or between
19 75,000 and 150,000, electric retail customers in this State on
20 January 1, 1995 if such utility commits not to petition
21 pursuant to Section 16-108(f) for entry of an order by the
22 Commission authorizing the electric utility to implement
23 transition charges for an additional period after December 31,
24 2006.

25 (1) For purposes of this subsection (e), "excess
26 earnings" means the difference between (A) the 2-year

1 average of the electric utility's earned rate of return on
2 common equity, less (B) the 2-year average of the sum of
3 (i) the Index applicable to each of the 2 years and (ii)
4 1.5 percentage points; provided, that "excess earnings"
5 shall never be less than zero.

6 (2) On or before March 31 of each year 2000 through
7 2007 each electric utility shall file a report with the
8 Commission showing its earned rate of return on common
9 equity, calculated in accordance with this subsection, for
10 the preceding calendar year and the average for the
11 preceding 2 calendar years.

12 (3) If an electric utility has excess earnings,
13 determined in accordance with paragraphs (1) and (2) of
14 this subsection, the refunds which the electric utility
15 shall pay to its customers beginning the first billing day
16 of April in the following year shall be calculated and
17 applied as follows:

18 (i) The electric utility's excess earnings shall
19 be multiplied by the average of the beginning and
20 ending balances of the electric utility's common
21 equity for the 2-year period in which excess earnings
22 occurred.

23 (ii) The result of the calculation in (i) shall be
24 multiplied by 0.50 and then divided by a number equal
25 to 1 minus the electric utility's composite federal and
26 State income tax rate.

1 (iii) The result of the calculation in (ii) shall
2 be divided by the sum of the electric utility's
3 projected total kilowatt-hour sales to retail
4 customers plus projected kilowatt-hours to be
5 delivered to delivery services customers over a one
6 year period beginning with the first billing date in
7 April in the succeeding year to determine a cents per
8 kilowatt-hour refund factor.

9 (iv) The cents per kilowatt-hour refund factor
10 calculated in (iii) shall be credited to the electric
11 utility's customers by applying the factor on the
12 customer's monthly bills to each kilowatt-hour sold or
13 delivered until the total amount calculated in (ii) has
14 been paid to customers.

15 (f) During the mandatory transition period, an electric
16 utility may file revised tariffs reducing the price of any
17 tariffed service offered by the electric utility for all
18 customers taking that tariffed service, which shall be
19 effective 7 days after filing.

20 (g) During the mandatory transition period, an electric
21 utility may, without obtaining any approval of the Commission
22 other than that provided for in this subsection and
23 notwithstanding any other provision of this Act or any rule or
24 regulation of the Commission that would require such approval:

25 (1) implement a reorganization, other than a merger of
26 2 or more public utilities as defined in Section 3-105 or

1 their holding companies;

2 (2) retire generating plants from service;

3 (3) sell, assign, lease or otherwise transfer assets to
4 an affiliated or unaffiliated entity and as part of such
5 transaction enter into service agreements, power purchase
6 agreements, or other agreements with the transferee;
7 provided, however, that the prices, terms and conditions of
8 any power purchase agreement must be approved or allowed
9 into effect by the Federal Energy Regulatory Commission; or

10 (4) use any accelerated cost recovery method including
11 accelerated depreciation, accelerated amortization or
12 other capital recovery methods, or record reductions to the
13 original cost of its assets.

14 In order to implement a reorganization, retire generating
15 plants from service, or sell, assign, lease or otherwise
16 transfer assets pursuant to this Section, the electric utility
17 shall comply with subsections (c) and (d) of Section 16-128, if
18 applicable, and subsection (k) of this Section, if applicable,
19 and provide the Commission with at least 30 days notice of the
20 proposed reorganization or transaction, which notice shall
21 include the following information:

22 (i) a complete statement of the entries that the
23 electric utility will make on its books and records of
24 account to implement the proposed reorganization or
25 transaction together with a certification from an
26 independent certified public accountant that such

1 entries are in accord with generally accepted
2 accounting principles and, if the Commission has
3 previously approved guidelines for cost allocations
4 between the utility and its affiliates, a
5 certification from the chief accounting officer of the
6 utility that such entries are in accord with those cost
7 allocation guidelines;

8 (ii) a description of how the electric utility will
9 use proceeds of any sale, assignment, lease or transfer
10 to retire debt or otherwise reduce or recover the costs
11 of services provided by such electric utility;

12 (iii) a list of all federal approvals or approvals
13 required from departments and agencies of this State,
14 other than the Commission, that the electric utility
15 has or will obtain before implementing the
16 reorganization or transaction;

17 (iv) an irrevocable commitment by the electric
18 utility that it will not, as a result of the
19 transaction, impose any stranded cost charges that it
20 might otherwise be allowed to charge retail customers
21 under federal law or increase the transition charges
22 that it is otherwise entitled to collect under this
23 Article XVI; and

24 (v) if the electric utility proposes to sell,
25 assign, lease or otherwise transfer a generating plant
26 that brings the amount of net dependable generating

1 capacity transferred pursuant to this subsection to an
2 amount equal to or greater than 15% of the electric
3 utility's net dependable capacity as of the effective
4 date of this amendatory Act of 1997, and enters into a
5 power purchase agreement with the entity to which such
6 generating plant is sold, assigned, leased, or
7 otherwise transferred, the electric utility also
8 agrees, if its fuel adjustment clause has not already
9 been eliminated, to eliminate its fuel adjustment
10 clause in accordance with subsection (b) of Section
11 9-220 for a period of time equal to the length of any
12 such power purchase agreement or successor agreement,
13 or until January 1, 2005, whichever is longer; if the
14 capacity of the generating plant so transferred and
15 related power purchase agreement does not result in the
16 elimination of the fuel adjustment clause under this
17 subsection, and the fuel adjustment clause has not
18 already been eliminated, the electric utility shall
19 agree that the costs associated with the transferred
20 plant that are included in the calculation of the rate
21 per kilowatt-hour to be applied pursuant to the
22 electric utility's fuel adjustment clause during such
23 period shall not exceed the per kilowatt-hour cost
24 associated with such generating plant included in the
25 electric utility's fuel adjustment clause during the
26 full calendar year preceding the transfer, with such

1 limit to be adjusted each year thereafter by the Gross
2 Domestic Product Implicit Price Deflator.

3 (vi) In addition, if the electric utility proposes
4 to sell, assign, or lease, (A) either (1) an amount of
5 generating plant that brings the amount of net
6 dependable generating capacity transferred pursuant to
7 this subsection to an amount equal to or greater than
8 15% of its net dependable capacity on the effective
9 date of this amendatory Act of 1997, or (2) one or more
10 generating plants with a total net dependable capacity
11 of 1100 megawatts, or (B) transmission and
12 distribution facilities that either (1) bring the
13 amount of transmission and distribution facilities
14 transferred pursuant to this subsection to an amount
15 equal to or greater than 15% of the electric utility's
16 total depreciated original cost investment in such
17 facilities, or (2) represent an investment of
18 \$25,000,000 in terms of total depreciated original
19 cost, the electric utility shall provide, in addition
20 to the information listed in subparagraphs (i) through
21 (v), the following information: (A) a description of
22 how the electric utility will meet its service
23 obligations under this Act in a safe and reliable
24 manner and (B) the electric utility's projected earned
25 rate of return on common equity, calculated in
26 accordance with subsection (d) of this Section, for

1 each year from the date of the notice through December
2 31, 2006 both with and without the proposed
3 transaction. If the Commission has not issued an order
4 initiating a hearing on the proposed transaction
5 within 30 days after the date the electric utility's
6 notice is filed, the transaction shall be deemed
7 approved. The Commission may, after notice and
8 hearing, prohibit the proposed transaction if it makes
9 either or both of the following findings: (1) that the
10 proposed transaction will render the electric utility
11 unable to provide its tariffed services in a safe and
12 reliable manner, or (2) that there is a strong
13 likelihood that consummation of the proposed
14 transaction will result in the electric utility being
15 entitled to request an increase in its base rates
16 during the mandatory transition period pursuant to
17 subsection (d) of this Section. Any hearing initiated
18 by the Commission into the proposed transaction shall
19 be completed, and the Commission's final order
20 approving or prohibiting the proposed transaction
21 shall be entered, within 90 days after the date the
22 electric utility's notice was filed. Provided,
23 however, that a sale, assignment, or lease of
24 transmission facilities to an independent system
25 operator that meets the requirements of Section 16-126
26 shall not be subject to Commission approval under this

1 Section.

2 In any proceeding conducted by the Commission
3 pursuant to this subparagraph (vi), intervention shall
4 be limited to parties with a direct interest in the
5 transaction which is the subject of the hearing and any
6 statutory consumer protection agency as defined in
7 subsection (d) of Section 9-102.1. Notwithstanding the
8 provisions of Section 10-113 of this Act, any
9 application seeking rehearing of an order issued under
10 this subparagraph (vi), whether filed by the electric
11 utility or by an intervening party, shall be filed
12 within 10 days after service of the order.

13 The Commission shall not in any subsequent proceeding or
14 otherwise, review such a reorganization or other transaction
15 authorized by this Section, but shall retain the authority to
16 allocate costs as stated in Section 16-111(i). An entity to
17 which an electric utility sells, assigns, leases or transfers
18 assets pursuant to this subsection (g) shall not, as a result
19 of the transactions specified in this subsection (g), be deemed
20 a public utility as defined in Section 3-105. Nothing in this
21 subsection (g) shall change any requirement under the
22 jurisdiction of the Illinois Department of Nuclear Safety
23 including, but not limited to, the payment of fees. Nothing in
24 this subsection (g) shall exempt a utility from obtaining a
25 certificate pursuant to Section 8-406 of this Act for the
26 construction of a new electric generating facility. Nothing in

1 this subsection (g) is intended to exempt the transactions
2 hereunder from the operation of the federal or State antitrust
3 laws. Nothing in this subsection (g) shall require an electric
4 utility to use the procedures specified in this subsection for
5 any of the transactions specified herein. Any other procedure
6 available under this Act may, at the electric utility's
7 election, be used for any such transaction.

8 (h) During the mandatory transition period, the Commission
9 shall not establish or use any rates of depreciation, which for
10 purposes of this subsection shall include amortization, for any
11 electric utility other than those established pursuant to
12 subsection (c) of Section 5-104 of this Act or utilized
13 pursuant to subsection (g) of this Section. Provided, however,
14 that in any proceeding to review an electric utility's rates
15 for tariffed services pursuant to Section 9-201, 9-202, 9-250
16 or 16-111(d) of this Act, the Commission may establish new
17 rates of depreciation for the electric utility in the same
18 manner provided in subsection (d) of Section 5-104 of this Act.
19 An electric utility implementing an accelerated cost recovery
20 method including accelerated depreciation, accelerated
21 amortization or other capital recovery methods, or recording
22 reductions to the original cost of its assets, pursuant to
23 subsection (g) of this Section, shall file a statement with the
24 Commission describing the accelerated cost recovery method to
25 be implemented or the reduction in the original cost of its
26 assets to be recorded. Upon the filing of such statement, the

1 accelerated cost recovery method or the reduction in the
2 original cost of assets shall be deemed to be approved by the
3 Commission as though an order had been entered by the
4 Commission.

5 (i) Subsequent to the mandatory transition period, the
6 Commission, in any proceeding to establish rates and charges
7 for tariffed services offered by an electric utility, shall
8 consider only (1) the then current or projected revenues,
9 costs, investments and cost of capital directly or indirectly
10 associated with the provision of such tariffed services; (2)
11 collection of transition charges in accordance with Sections
12 16-102 and 16-108 of this Act; (3) recovery of any employee
13 transition costs as described in Section 16-128 which the
14 electric utility is continuing to incur, including recovery of
15 any unamortized portion of such costs previously incurred or
16 committed, with such costs to be equitably allocated among
17 bundled services, delivery services, and contracts with
18 alternative retail electric suppliers; and (4) recovery of the
19 costs associated with the electric utility's compliance with
20 decommissioning funding requirements; and shall not consider
21 any other revenues, costs, investments or cost of capital of
22 either the electric utility or of any affiliate of the electric
23 utility that are not associated with the provision of tariffed
24 services. In setting rates for tariffed services, the
25 Commission shall equitably allocate joint and common costs and
26 investments between the electric utility's competitive and

1 tariffed services. In determining the justness and
2 reasonableness of the electric power and energy component of an
3 electric utility's rates for tariffed services subsequent to
4 the mandatory transition period and prior to the time that the
5 provision of such electric power and energy is declared
6 competitive, the Commission shall consider the extent to which
7 the electric utility's tariffed rates for such component for
8 each customer class exceed the market value determined pursuant
9 to Section 16-112, and, if the electric power and energy
10 component of such tariffed rate exceeds the market value by
11 more than 10% for any customer class, may establish such
12 electric power and energy component at a rate equal to the
13 market value plus 10%. In any such case, the Commission may
14 also elect to extend the provisions of Section 16-111(e) for
15 any period in which the electric utility is collecting
16 transition charges, using information applicable to such
17 period.

18 (j) During the mandatory transition period, an electric
19 utility may elect to transfer to a non-operating income account
20 under the Commission's Uniform System of Accounts either or
21 both of (i) an amount of unamortized investment tax credit that
22 is in addition to the ratable amount which is credited to the
23 electric utility's operating income account for the year in
24 accordance with Section 46(f)(2) of the federal Internal
25 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
26 (ii) "excess tax reserves", as that term is defined in Section

1 203(e) (2) (A) of the federal Tax Reform Act of 1986, provided
2 that (A) the amount transferred may not exceed the amount of
3 the electric utility's assets that were created pursuant to
4 Statement of Financial Accounting Standards No. 71 which the
5 electric utility has written off during the mandatory
6 transition period, and (B) the transfer shall not be effective
7 until approved by the Internal Revenue Service. An electric
8 utility electing to make such a transfer shall file a statement
9 with the Commission stating the amount and timing of the
10 transfer for which it intends to request approval of the
11 Internal Revenue Service, along with a copy of its proposed
12 request to the Internal Revenue Service for a ruling. The
13 Commission shall issue an order within 14 days after the
14 electric utility's filing approving, subject to receipt of
15 approval from the Internal Revenue Service, the proposed
16 transfer.

17 (k) If an electric utility is selling or transferring to a
18 single buyer 5 or more generating plants located in this State
19 with a total net dependable capacity of 5000 megawatts or more
20 pursuant to subsection (g) of this Section and has obtained a
21 sale price or consideration that exceeds 200% of the book value
22 of such plants, the electric utility must provide to the
23 Governor, the President of the Illinois Senate, the Minority
24 Leader of the Illinois Senate, the Speaker of the Illinois
25 House of Representatives, and the Minority Leader of the
26 Illinois House of Representatives no later than 15 days after

1 filing its notice under subsection (g) of this Section or 5
2 days after the date on which this subsection (k) becomes law,
3 whichever is later, a written commitment in which such electric
4 utility agrees to expend \$2 billion outside the corporate
5 limits of any municipality with 1,000,000 or more inhabitants
6 within such electric utility's service area, over a 6-year
7 period beginning with the calendar year in which the notice is
8 filed, on projects, programs, and improvements within its
9 service area relating to transmission and distribution
10 including, without limitation, infrastructure expansion,
11 repair and replacement, capital investments, operations and
12 maintenance, and vegetation management.

13 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,
14 eff. 7-18-02; revised 9-10-02.)